

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for exemption under Rule 25-22.082(18), F.A.C., from issuing a request for proposals (RFPs) for modernization of the Lauderdale Plant, by Florida Power & Light Company

Docket No. 20170122-EI

Filed: August 25, 2017

**SIERRA CLUB'S MOTION FOR LEAVE TO FILE A REPLY TO FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO SIERRA CLUB'S PETITION TO INTERVENE AND PROTEST**

Pursuant to Rule 28-106.204(1), F.A.C., Sierra Club files this motion for leave to file a Reply to Florida Power & Light Company's ("FPL") Response to Sierra Club's Petition to Intervene and Protest (Sierra Club's Reply is attached hereto as Exhibit 1). In the alternative, Sierra Club is entitled, without seeking leave, to file a Response to FPL's Response to Sierra Club's Petition to Intervene and Protest, because FPL's Response requests specific action (abeyance and consolidation) from the Public Service Commission (Commission). Accordingly, FPL's Response is properly construed as a motion to which Sierra Club, under Rule 28-106.204, F.A.C., is entitled to file a response. In an abundance of caution, however, Sierra Club is also filing this motion for leave to file a reply.

In support of this motion, Sierra Club submits the following:

1. Subject to certain conditions identified in paragraph 3 below, Sierra Club concurs with the relief requested by FPL in its Response; that the Commission hold the Sierra Club's Protest to FPL's Petition for a Bid Rule exemption in abeyance, and consolidate this docket with FPL's anticipated future need determination filing.

2. On August 21, FPL filed its Response to Sierra Club's Petition to Intervene and Protest, altering the relief sought from its May 22 Petition for Bid Rule exemption. In

its Response, FPL asks that “the Commission hold this [protest] proceeding in abeyance and take no further action at this time.” Response at 6. FPL asks that “[t]his abeyance should continue until FPL files its need determination for the Dania Beach Project, at which time the Commission should consolidate the need determination docket for the Project with this docket for the purposes of hearing.” *Id.* FPL further notes that “[t]he Commission would then address the Bid Rule exemption request as a separate issue along with the other issues addressed in the need determination proceeding.” *Id.*

3. Accordingly, the relief that FPL seeks in response to Sierra Club’s Protest is distinct from that sought in its original request for an exemption from the Bid Rule. As set forth in the attached proposed Reply, Sierra Club does not object to the Commission granting that relief, as long as the Commission ensures that: (a) FPL takes no action that might prejudice the Commission’s review of the most cost effective alternative available, and the remedy Sierra Club seeks, including by making any irreversible commitments of resources; (b) FPL clearly establishes and substantiates at the outset and on the record in the consolidated docket the specific need to be addressed in the need determination proceeding; (c) the Commission requests and invites interested parties to submit proposals, including demand-side and supply-side resource options, so that all potential cost effective alternatives are considered; and (d) the Commission’s Rule 25-22.080(2), F.A.C., and section 403.507(4)(a), F.S., requirement that the Commission conduct a hearing within 90 days and make a decision within 135 days, is tolled during the period in which interested parties are allowed to submit proposals.

4. Because FPL is seeking relief distinct from its original Petition, Sierra Club submits that it is entitled to respond to FPL's Response, or alternatively, that leave to file the proposed Reply, attached hereto as Exhibit 1, is warranted to allow Sierra Club to convey to the Commission its position on FPL's newly proposed and requested relief.

Notice of Conferral

5. On August 24, 2017, Pursuant to Rule 28-106.204(c), F.A.C., Sierra Club requested that FPL and the Office of Public Counsel (OPC) indicate whether or not they oppose Sierra Club's Motion for Leave to File a Reply to FPL's Response to Sierra Club's Petition to Intervene and Protest. OPC responded by email that it did not oppose Sierra Club's motion. FPL responded by email that it objects to this motion.

Relief Requested

WHEREFORE, Sierra Club requests that the Commission (1) grant its motion for leave to file a reply to FPL's Response to Sierra Club's Petition to Intervene and Protest, and (2) file

the proposed Reply to FPL's Response to Sierra Club's Petition to Intervene and Protest,  
attached as Exhibit 1.

Respectfully submitted,

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# Exhibit 1

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Docket No. 20170122-EI

Filed: August 25<sup>th</sup>, 2017

**SIERRA CLUB'S REPLY TO FLORIDA POWER & LIGHT  
COMPANY'S RESPONSE TO SIERRA CLUB'S PETITION  
TO INTERVENE AND PROTEST**

Sierra Club submits this Reply to address the relief requested by Florida Power & Light Company ("FPL") in its Response to Sierra Club's Petition to Intervene and Protest (Protest). FPL has requested that the Commission hold the Protest in abeyance until FPL files its petition for a need determination for the Dania Beach gas plant ("the Project"), at which time FPL requests the two dockets be consolidated and Sierra Club's Protest be treated as a separate issue in the need determination docket. As detailed further below, Sierra Club does not object to this request, subject to the conditions identified below.

**I. Background**

Sierra Club incorporates by reference as background for this Reply the information set forth in paragraph 2 of Sierra Club's Motion for Leave to File a Reply to FPL's Response to Sierra Club's Petition to Intervene and Protest.

**II. Sierra Club Consents To FPL's Requested Procedure Subject To Four Conditions**

1. FPL in its Response "requests that the Commission hold this [protest] proceeding in abeyance and take no further action at this time." Response at 6. FPL asks that "[t]his abeyance should continue until FPL files its need determination [*sic*] for the

Dania Beach Project, at which time the Commission should consolidate the need determination docket for the Project with this docket for the purposes of hearing.” *Id.* FPL further notes that “[t]he Commission would then address the Bid Rule exemption request as a separate issue along with the other issues addressed in the need determination proceeding.” *Id.*

2. Whereas, Section 403.519(3), F.S., provides, *inter alia*, that the Commission’s determination of need for the proposed Project “shall take into account . . . whether the proposed plant is the most cost-effective alternative available, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.”

3. Whereas, FPL has represented that there is a “mid-2024 system need and [a] mid-2025 Southeastern Florida imbalance issue.” FPL’s Petition to Request Bid Rule Exemption at 5, para. 8.

4. Sierra Club does not object to FPL’s request that the Commission hold this docket in abeyance, and consolidate this docket with a future need determination docket for the Project, subject to the following four conditions:

a. To allow the Commission the opportunity to render an informed decision on the consolidated bid rule exemption protest and need determination dockets, FPL must not take any actions that might prejudice the Commission’s review of the most cost effective alternative available, including by making any irreversible commitments of resources;

b. FPL clearly establishes and substantiates at the outset and on the record in the consolidated docket the specific need to be addressed in the need determination proceeding;

c. Once that need is identified, and given the mandate in Section 403.519(3), F.S., that the “most cost-effective alternative available [including] renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available,” the Commission requests and invites interested parties to submit proposals, including demand-side and supply-side resource options, so that all potential cost effective alternatives are considered. Should FPL seek an exemption to bidding out to third parties the specific project identified as cost effective, FPL can do so at that time. Any other process would undermine the Commission’s ability to meaningfully evaluate the need, and the least cost approach to meet the need, as required by Section 403.519(3), F.S.;<sup>1</sup> and

d. That the Commission’s Rule 25-22.080(2), F.A.C., and section 403.507(4)(a), F.S., requirement that the Commission conduct a hearing within 90 days and make a decision within 135 days, is tolled during the period in which interested parties are allowed to submit proposals.<sup>2</sup>

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<sup>1</sup> Requesting proposals for projects that can meet the need FPL identifies does not in any way render FPL’s request for a bid exemption moot. Once the “most cost-effective alternative available,” Section 403.510(3), Fla. Stat., is identified by the Commission in the need determination proceeding, there remains the question of who will build the project, which is the subject matter of the bid exemption.

<sup>2</sup> See *In re: Petition to Determine Need for West County Energy Center Unit 3 electrical power plant, by Florida Power & Light Company*, *In re: Petition for determination of need for conversion of Riviera Plant in Palm Beach County, by Florida Power & Light Company*, *In re: Petition for determination of need for conversion of Cape Canaveral Plant in Brevard County, by Florida Power & Light Company*, Docket Nos. 20080203-EI, 20080245-EI, and 20080246-EI, Order No. PSC-2008-0591-FOF-EI (F.P.S.C. Sept. 12, 2008), at 12 (“In 2008, FPL . . . issued an RFP for renewable generation, receiving proposals for 262 MW. The deadline for the proposals was less than two weeks prior to the date of the hearing in this docket, which allowed insufficient time for FPL to evaluate the responses.”).

**WHEREFORE**, Sierra Club, as set forth above, does not object with FPL's request that the Commission hold this docket in abeyance, and consolidate this docket with FPL's future need determination docket for the Project, once FPL files such a petition, as long as the Commission ensures: (a) FPL takes no action that might prejudice the Commission's review of the most cost effective alternative available, including by making any irreversible commitments of resources; (b) FPL clearly establishes and substantiates at the outset and on the record in the consolidated docket the specific need to be addressed in the need determination proceeding; (c) the Commission requests and invites interested parties to submit proposals, including demand-side and supply-side resource options, so that all potential cost effective alternatives are considered; and (d) the Commission's Rule 25-22.080(2), F.A.C., and section 403.507(4)(a), F.S., requirement that the Commission conduct a hearing within 90 days and make a decision within 135 days, is tolled during the period in which interested parties are allowed to submit proposals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of “Sierra Club’s Motion for Leave to File a Reply to Florida Power & Light Company’s Response to Sierra Club’s Petition to Intervene and Protest” and Exhibit 1, which is “Sierra Club’s Reply to Florida Power & Light Company’s Response to Sierra Club’s Petition to Intervene and Protest” were served electronically on this 25<sup>th</sup> day of August, 2017 on:

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